

Taxation and Revenue Department
Joseph M. Montoya Building
Post Office Box 630
Santa Fe, New Mexico 87504-0630

Tax Refund Intercept Program
Sections 7-2C-1 To 7-2C-13 NMSA 1978

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7-2C-1. SHORT TITLE.-- Chapter 7, Article 2C NMSA 1978 may be cited as the "Tax Refund Intercept Program Act".
(Laws 1993, Chapter 30, Section 12)

7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for:

(a) overpayment of public assistance and overissuance of food stamps;

(b) overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(c) nonpayment of reimbursements owed to the uninsured employers' fund under the Workers'

Compensation Act; and

(d) nonpayment of the workers' compensation fee due under the Workers' Compensation Administration Act;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; and

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to loans made against the credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors.

(Laws 2006, Chapter 52, Section 1; Laws 2006, Chapter 53, Section 1)

7-2C-3. DEFINITIONS.--As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the employment security division of the labor department, the workers' compensation administration, any corporation authorized to be formed under the Educational Assistance Act, a district, magistrate or municipal court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or an individual to pay a liquidated amount of money that:

(1) is equal to or more than one hundred dollars (\$100);

(2) is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) has accrued through contract, tort, subrogation or operation of law; and

(4) either:

(a) has been secured by a warrant of levy and lien for amounts due under the Unemployment Compensation Law or workers' compensation fees due under the Workers' Compensation Administration Act; or

(b) has been reduced to judgment for all other cases;

C. "debtor" means any employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act, which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act or the Corporate Income and Franchise

Tax Act that the department has determined to be due to an individual or corporation.

(Laws 2006, Chapter 52, Section 2; Laws 2006, Chapter 53, Section 2)

7-2C-4. REMEDY ADDITIONAL.--The remedies of a claimant agency under the Tax Refund Intercept Program Act are in addition to and not in substitution for any other remedies available by law.

(Laws 1985, Chapter 106, Section 4)

7-2C-5. DEPARTMENT TO AID IN COLLECTION OF DEBTS THROUGH SETOFF.--Subject to the limitations contained in the Tax Refund Intercept Program Act, the department, upon request, shall render assistance in the collection of any debt owed to a claimant agency or any debt that a claimant agency is obligated by law to collect. This assistance shall be provided by withholding from any refund due to the debtor pursuant to the Income Tax Act the amount of debt meeting the requirements of the Tax Refund Intercept Program Act and paying over to the claimant agency the amount withheld.
(Laws 1994, Chapter 56, Section 2)

7-2C-6. PROCEDURES FOR SETOFF--NOTIFICATIONS TO DEBTOR.--

A. Each year a claimant agency seeking to collect a debt through setoff shall notify the department in the manner and by the date required by the department, which date shall be in the period from November 1 through December 15. The notice to the department shall include the amount of the debt, the name and identification number of the debtor and such other information as the department may require. The notice shall also include certification that the debt is due and owing the claimant agency or that the claimant agency is obligated by law to collect the debt. This notice shall be effective only to initiate setoff against refunds that would be made in the

calendar year subsequent to the year in which notification is made to the department.

B. The claimant agency shall inform the department within one week of any changes in the status of any debt submitted by the claimant agency for setoff.

C. Upon proper and timely notification from the claimant agency, the department shall determine whether the debtor is entitled to a refund of at least fifty dollars (\$50.00). The department shall notify the claimant agency in writing, or in such other manner as the department and the claimant agency may agree, with respect to each debt accepted for setoff whether the debtor is due a refund of fifty dollars (\$50.00) or more and, if so, the amount of refund, the address of the debtor entered upon the return and, if the refund arises from a joint return, the name and address of the spouse as entered upon the return.

D. Within ten days after receiving the notification from the department pursuant to Subsection C of this section, the claimant agency shall send a notice by first class mail to the debtor at the debtor's last known address. The notice required by this subsection shall include:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the amount of the debt asserted and a description of how the debt asserted arose;

(3) the name, address and telephone number of the claimant agency;

(4) the amount of refund to be set off against the debt asserted;

(5) a statement that the debtor has thirty days from the date indicated on the notice to contest the setoff by applying to the claimant agency for a hearing with respect to the validity of the debt asserted by that agency; and

(6) a statement that failure of the debtor to apply for a hearing within thirty days will be deemed a waiver of the opportunity to contest the setoff and to a hearing.

E. If the refund against which a debt is intended to be set off results from a joint tax return, the claimant agency shall send a notice by first class mail to the spouse named on the return within ten days after receiving the notification from the department pursuant to Subsection C of this section. The notice to the spouse shall contain the following information:

(1) a statement that a transfer of the refund will be made and that the claimant agency intends to set off the amount of the transfer against a claimed debt;

(2) the total amount of the refund and the amount of each claimed debt;

(3) the name, address and telephone number of the claimant agency;

(4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed debt against the debtor spouse;

(5) a statement that to assert a claim to all or part of the refund, the spouse shall apply to the claimant agency for a hearing within thirty days from the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the claimant agency; and

(6) a statement that failure of the spouse to apply for a hearing within thirty days may be deemed a waiver of any claim of the spouse with respect to the refund.

F. A debtor may contest the setoff of a debt by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection D of this section is sent to the debtor. Failure of the debtor to apply for a hearing within the time required shall constitute a waiver of the right to contest the debt or the setoff of the debt.

G. A spouse may contest the setoff of a debt against a refund to which the spouse claims entitlement in whole or in part by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection E of this section was sent to the spouse. Failure of the spouse to apply for a hearing within the time required shall constitute a waiver of the right to contest the setoff of the debt against a refund to which the spouse may claim entitlement.

H. The department shall apply against the refund the amount of the claimed debt, not to exceed the amount of the refund, and shall transfer that amount to the claimant agency with an accounting of the amount transferred. When the amount of refund due exceeds the amount of all applied debts, the department shall treat the excess as it does other refunds relating to income taxes.

I. Whether or not the refund due the debtor exceeds the amount of the applied debt, the department shall notify the debtor at the time of the transfer to the claimant agency of:

(1) the fact of the transfer and that the claimant agency intends to set off the amount of the transfer against the asserted debt;

(2) the total amount of the refund;

(3) the amount of debt asserted by the claimant agency; and

(4) the name, address and telephone number of the claimant agency.

J. Once the department has sent to the debtor the notice required by Subsection I of this section, together with any excess of the amount of refund over the amount of asserted debts, the department shall be deemed to have made the refund required by the Income Tax Act or the Corporate Income and Franchise Tax Act.

(Laws 2006, Chapter 52, Section 3, Laws 2006, Chapter 53, Section 3)

7-2C-7. SUSPENSE ACCOUNT.--Upon receipt of money transferred from the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, the claimant agency shall deposit and hold the money in the suspense account until a final determination of the setoff is made.
(Laws 1994, Chapter 56, Section 4)

7-2C-8. INTEREST BECOMES OBLIGATION OF CLAIMANT AGENCY.--Once a transfer is made by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, notwithstanding any other provision of law to the contrary, the department, except in its capacity as a claimant agency, is not obligated in any manner for the payment of interest to the debtor or to the

claimant agency with respect to that portion of the refund against which the asserted debt was applied for any period after the date of transfer. Any interest subsequently determined to be due the debtor with respect to any refund against which the asserted debt was applied for any period after the date of transfer is the responsibility of the claimant agency; provided, however, compliance by the department and claimant agency with the provisions of the Tax Refund Intercept Program Act bars accrual of interest, notwithstanding the provisions of Section 7-1-68 NMSA 1978.

(Laws 1994, Chapter 56, Section 5)

7-2C-9. ADMINISTRATIVE HEARING REQUIRED OF CLAIMANT AGENCY--DEPARTMENT EXEMPTED.--

A. The claimant agency shall provide notice and opportunity for hearing, consistent with due process, as required by Subsections F and G of Section 7-2C-6 NMSA 1978.

B. Notwithstanding any other provision of law, the department, except in its capacity as a claimant agency, is not obligated to grant, and will not grant, a hearing to any debtor or spouse with respect to any action taken or any issue arising under the provisions of the Tax Refund Intercept Program Act.

(Laws 1994, Chapter 56, Section 6)

7-2C-10. FINAL DETERMINATION AND NOTICE OF SETOFF.--

A. The determination of the validity and the amount of the setoff asserted or the application of setoff to a refund to which a debtor or spouse asserts entitlement in whole or in part under the provisions of the Tax Refund Intercept Program Act shall be final upon the exhaustion of the administrative or appellate process as applicable.

B. If, during application of setoff procedures, any changes occur in the amount of the refund subject to setoff, including any changes resulting from the filing of amended returns or the filing of additional returns during the calendar year for which the claimant agency has requested setoff with respect to the debtor, the department shall notify the claimant agency of these changes. The department shall promulgate regulations or other appropriate administrative directives to set forth the procedures by which such notice shall be made and by which the amount held in suspense shall be adjusted when required.

C. Upon final determination of the entitlement of a debtor or spouse to any or all of that portion of a refund that has been transferred to the claimant agency, as the amount transferred may be adjusted in accordance with Subsection B of this section, the claimant agency shall remit to the debtor or spouse from the suspense fund the amount determined to be due, with an appropriate accounting. A copy of the accounting shall be sent to the department.

D. Upon final determination, the claimant agency shall remit to itself from the suspense account that amount determined to be due the claimant agency and shall credit that amount against the debt. In the case that the amount remitted is not sufficient to extinguish the debt, the claimant agency shall have the right to pursue collection of the remaining debt through any available remedy, including a proceeding under the Tax Refund Intercept Program Act for other calendar years.

E. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, the claimant agency shall notify the debtor in writing of the final determination of the setoff. A copy of the notice shall be sent to the department. The notice shall include:

(1) a final accounting of the refund against which the debt was set off, including the amount of the refund to which the debtor was entitled prior to setoff;

(2) the final determination of the amount of the debt that has been satisfied and the amount of debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, any amount finally determined to be due to the debtor with respect to the refund amount shall be promptly paid by the claimant agency from the suspense account to the debtor with an appropriate accounting. Interest due the debtor with respect to the amount of refund finally determined to be due the debtor for any period after the transfer

to the suspense fund by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978 is authorized to be paid by the claimant agency from any funds available to it for this purpose.
(Laws 1994, Chapter 56, Section 7)

7-2C-11. PRIORITY OF CLAIMS.--

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law that authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act.

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims of the human services department resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act;

(4) claims of the human services department resulting from AFDC liabilities;

(5) claims of the human services department resulting from food stamp liabilities;

(6) claims of the employment security division of the labor department arising under the Unemployment Compensation Law;

(7) claims of a district court for fines, fees or costs owed to that court;

(8) claims of a magistrate court for fines, fees or costs owed to that court;

(9) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court;

(10) claims of a municipal court for fines, fees or costs owed to that court; and

(11) claims of the workers' compensation administration arising under the Workers' Compensation Act or the Workers' Compensation Administration Act.

(Laws 2006, Chapter 52, Section 4, Laws 2006, Chapter 53, Section 4)

7-2C-12. ADMINISTRATIVE COSTS--CHARGES APPROPRIATED TO DEPARTMENT.--

A. The department shall charge claimant agencies an administrative fee of three percent of the debts for the claimant agencies pursuant to the Tax Refund Intercept Program Act.

B. The administrative fee authorized pursuant to Subsection A of this section shall be withheld on all debts set off and collected by the department on or after July 1, 1997 and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and expenses or other obligations related to the bonds for the taxation and revenue information management systems project. That distribution shall continue until the earlier of December 31, 2005 or the date on which the New Mexico finance authority certifies to the department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged or provision has been made for their discharge and directs the department to cease distributing the money from the fee pursuant to Subsection A of this section to the authority. Thereafter, the administrative fees are appropriated to the department for use in administering the Tax Refund Intercept Program Act.

(Laws 1997, Chapter 125, Section 5)

7-2C-13. CONFIDENTIALITY--EXEMPTION.--

A. The information obtained by a claimant agency from the department in accordance with the provisions of the Tax Refund Intercept Program Act shall be confidential and shall be used by the claimant agency only in pursuit of the collection of a debt under the provisions of the Tax Refund Intercept Program Act. Any employee or former employee of a claimant agency who unlawfully discloses any information obtained from the department is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year or both and shall not be employed by the state for a period of five years after the date of conviction.

B. Notwithstanding other provisions of law prohibiting disclosure by the department of information from a taxpayer's return, the department may provide to a claimant agency any information deemed necessary by the department to accomplish the purposes of the Tax Refund Intercept Program Act.

(Laws 1994, Chapter 56, Section 9)
